



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 25, 1990

Mr. Michael Anthony Moss
Assistant City Attorney
City of Houston
Post Office Box 1562
Houston, Texas 77251-1562

OR90-519

Dear Mr. Moss:

You ask whether certain information regarding investigations concerning three former Houston police officers is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 8864.

We have considered the exceptions you claimed, specifically sections 3(a)(1), (8), and (11), and have reviewed the documents at issue.

With respect to your claims under sections 3(a)(1) and (8), you assert that the release of the requested information will unduly interfere with law enforcement by impairing the willingness of witnesses to cooperate with future investigations. With respect to the argument regarding the future ability of the internal affairs division to obtain witness cooperation, you are, in effect asserting that witness statements are excepted from disclosure under the informer's privilege. The statements in question were made by public officers and employees to the internal affairs division of the Harris County Sheriff's Department in connection with an internal investigation. Section 3(a)(1) excepts from disclosure information deemed confidential by constitutional or statutory law or judicial decision. The informer's privilege is a well-established section 3(a)(1) exception to the general rule requiring disclosure and has been recognized by this office in numerous published opinions. See e.g., Open Records Decision Nos. 515 (1988); 279 (1981) (and authorities cited therein).

The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. If the contents of the informer's statement would tend to reveal the identity of the informer, the

privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. Moreover, the basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. Id.

Neither cases nor opinions have extended the informer's privilege to protect the identities of public employees making statements about the routine conduct of the business of government. Furthermore, the policy underlying the informer's privilege does not support extending the privilege to cover statements such as these made by public employees about public business. Accordingly, statements by law enforcement officers may not be withheld under the asserted exception. However, statements made by cooperating civilians may be withheld to the extent necessary to protect the identity of the informant.

You do not assert, nor is it apparent on the face of the documents how the release of this information will reveal any unobvious strategies or otherwise enable a wrongdoer to thwart an investigation. See Open Records Decision No. 531 (1989).

You assert that certain material is protected from disclosure by section 3(a)(11) of the act. You assert that the indicated material contains advice, opinion and recommendation so inextricably entwined with references to the factual matters at issue, that they fall within the exception for inter- and intra-agency memoranda. Section 3(a)(11) of the act was intended to protect from disclosure to the public advice, opinion, and recommendation used in the decision-making process within an agency or between agencies. See e.g., Open Records Decision No. 549 (1990). The purpose of the protection is to foster open and frank discussion in the deliberative process. Information that is purely factual may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986). At our request, you have marked the information you believe qualifies for exception under section 3(a)(11). We have reviewed this information and have determined that some of the material must be disclosed because it is objective observation of fact. Although some statements are couched as recommendations (for example: "I recommend the allegation be classified as not sustained."), there is no documentation of the final decision of the city with respect to these recommendations. If, in fact, these recommendations represent the final conclusion of the city with respect to these investigations, they would appear dispositive of the matter investigated, rather than true recommendations, and

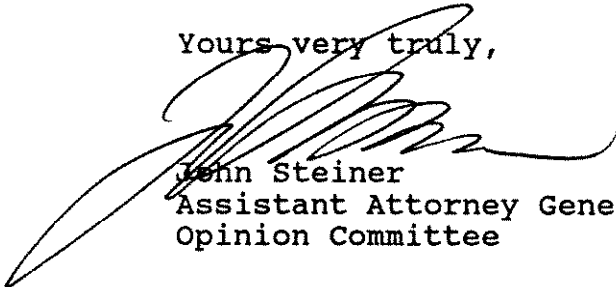
accordingly not appropriately excepted under section 3(a)(11). See, V.T.C.S. art. 6252-17a, § 6(1). However, as you indicate they are recommendations, and as the writer of the memoranda does not appear to be the ultimate decision maker with respect to these matters, we accept your claim of exception under section 3(a)(11) for these statements.

In summary, you may withhold the names of civilian informants and the statements of such informants to the extent necessary to protect their identities. The marked portions of the document are excepted from disclosure under section 3(a)(11). The remaining information must be released.

We note that the information submitted for our review contains some payroll information. This information should be edited before release to avoid disclosure of confidential federal tax information or payroll withholding information. See Open Records Decisions Nos. 545 (1990), 226 (1979).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-519.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/le

Ref.: ID# 8864, 9970

Enclosure: Documents Submitted

cc: Lorraine Adams and Dan Malone
Dallas Morning News
Communications Center
Dallas, Texas 75265